

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nick.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

JOSEPH L. STEINFELD, JR.
jsteinfeld@askllp.com
BRIGETTE MCGRATH
bmcgrath@askllp.com
ASK LLP, 2600 Eagan Woods Drive
Suite 400, St. Paul, MN 55121
Tel: (651) 406-9665 / Fax: (651) 406-9676

Counsel to Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

- | |
|-----------------------------------------------------------------------------------|
| <input checked="checked" type="checkbox"/> Affects All Debtors |
| <input type="checkbox"/> Affects Verity Health System of California, Inc. |
| <input type="checkbox"/> Affects O'Connor Hospital |
| <input type="checkbox"/> Affects Saint Louise Regional Hospital |
| <input type="checkbox"/> Affects St. Francis Medical Center |
| <input type="checkbox"/> Affects St. Vincent Medical Center |
| <input type="checkbox"/> Affects Seton Medical Center |
| <input type="checkbox"/> Affects O'Connor Hospital Foundation |
| <input type="checkbox"/> Affects Saint Louise Regional Hospital Foundation |
| <input type="checkbox"/> Affects St. Francis Medical Center of Lynwood Foundation |
| <input type="checkbox"/> Affects St. Vincent Foundation |
| <input type="checkbox"/> Affects St. Vincent Dialysis Center, Inc. |
| <input type="checkbox"/> Affects Seton Medical Center Foundation |
| <input type="checkbox"/> Affects Verity Business Services |
| <input type="checkbox"/> Affects Verity Medical Foundation |

Lead Case No. 2:18-bk-20151-ER

Jointly administered with:
Case No. 2:18-bk-20162-ER;
Case No. 2:18-bk-20163-ER;
Case No. 2:18-bk-20164-ER;
Case No. 2:18-bk-20165-ER;
Case No. 2:18-bk-20167-ER;
Case No. 2:18-bk-20168-ER;
Case No. 2:18-bk-20169-ER;
Case No. 2:18-bk-20171-ER;
Case No. 2:18-bk-20172-ER;
Case No. 2:18-bk-20173-ER;
Case No. 2:18-bk-20175-ER;
Case No. 2:18-bk-20176-ER;
Case No. 2:18-bk-20178-ER;
Case No. 2:18-bk-20179-ER;
Case No. 2:18-bk-20180-ER;
Case No. 2:18-bk-20181-ER;

Chapter 11 Cases

Hon. Ernest M. Robles

Adversary No. _____.

- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose Dialysis, LLC

**COMPLAINT TO AVOID AND
RECOVER TRANSFERS PURSUANT
TO 11 U.S.C. §§ 547, 549, AND 550 AND
TO DISALLOW CLAIMS PURSUANT
TO 11 U.S.C. § 502**

Debtors and Debtors In Possession.

St. Vincent Medical Center, Seton Medical Center,
and O'Connor Hospital,

Plaintiffs,

v.

Penumbra, Inc.,

Defendant.

St. Vincent Medical Center, Seton Medical Center, and O'Connor Hospital (collectively, the "Plaintiffs"), three of the debtors in the above-captioned chapter 11 case (each a "Debtor" and, collectively, the "Debtors"), files this complaint (the "Complaint") to avoid and recover preferential transfers against Penumbra, Inc. (the "Defendant") and to disallow any claims held by Defendant. In support of this Complaint, Plaintiffs allege upon information and belief that:

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction over this adversary proceeding, which arises under title 11, arises in, and relates to a case under title 11, in the United States Bankruptcy Court for the Central District of California (the "Court"), captioned *In re Verity Health System of California, Inc., et al.*, Case No. 2:18-bk-20151-ER, pursuant to 28 U.S.C. §§ 157 and 1334(b).

2. The statutory and legal predicates for the relief sought herein are sections 502, 547, 549, and 550 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code")¹ and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. This adversary proceeding is a "core" proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2). Plaintiffs consent to entry of final orders and judgment by the Court.

¹ All references to "§" herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* unless otherwise noted.

1 4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2
3 **THE PARTIES**

4 5. As more fully discussed in the *Declaration Of Richard G. Adcock In Support Of First-*
5 *Day Motions*,² on the Petition Date (defined below), the Debtors operated as a nonprofit health care
6 system in the state of California.

7 6. Pursuant to §§ 547, 549, 550, 1106, and 1107, Plaintiffs are authorized and have standing
8 to pursue this avoidance action.

9 7. Upon information and belief, Defendant was, at all relevant times, a vendor or creditor
10 that provided goods and/or services to or for the Debtors. Upon further information and belief, at all
11 relevant times, Defendant's principal place of business is located at One Penumbra Place, Alameda,
12 California 94502.

13 **PROCEDURAL BACKGROUND**

14 8. On August 31, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition
15 for relief under the Bankruptcy Code. The Debtors' chapter 11 cases (the "Debtors' Cases") are being
16 jointly administered. Since the commencement of the Debtors' Cases, the Debtors have been operating
17 their businesses as debtors in possession pursuant to §§ 1107 and 1108.

18 9. On September 17, 2018, the Office of the United States Trustee appointed an Official
19 Committee of Unsecured Creditors in the Debtors' Cases. *See* Docket No. 197.

20 10. On August 14, 2020, the Court entered the *Order Confirming Modified Second Amended*
21 *Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured*
22 *Creditors, and the Committee*. *See* Docket No. 5504.

23 **FACTUAL BACKGROUND**

24 11. Prior to the Petition Date, the Debtors maintained business relationships with various
25 business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods
26 and services.

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² [Docket No. 8].

1 12. As a part of a hospital system, the Debtors regularly purchased goods from various
2 entities including vendors, creditors, suppliers and distributors. The Debtors also regularly paid for
3 services used to facilitate its business.

4 13. The Debtors' financial difficulties that led to the decision to file petitions for bankruptcy
5 are attributable to a combination of factors, all of which placed significant stress on the Debtors'
6 liquidity position in the months leading up to the Petition Date. These factors included, among other
7 things: (i) the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities,
8 (ii) an inability to renegotiate collective bargaining agreements or payor contracts, (iii) the continuing
9 need for significant capital expenditures for seismic obligations and gaining infrastructure, (iv) and the
10 general headwinds facing the hospital industry.

11 14. As of the Petition Date, the Debtors utilized and maintained a cash management system
12 (the "Cash Management System") for the collection, concentration, management, and disbursement of
13 funds in their business.³ As of the Petition Date, the Cash Management System consisted of lock box
14 accounts, gross revenue accounts, operating accounts, payroll accounts, and other accounts. [See
15 Docket No. 23].

16 15. Among these bank accounts, the Debtors made disbursements to vendors from accounts
17 ending 6389, 6365, 6384, 6407, 6421, 6426, 6402, 6440, 1597 at Bank of America, N.A. and account
18 ending 9996 at Wells Fargo Bank, N.A. (the "Disbursement Accounts").

19 16. During the ninety (90) days before and including the Petition Date, that is between June
20 2, 2018 and August 31, 2018 (the "Preference Period"), the Debtors continued to operate their business,
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27 ³ See *Emergency Motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System,*
28 *Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary*
Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for
PostPetition Intercompany Claims; and (5) Obtain Related Relief [Docket No. 23].

1 including the transfer of money, either by checks, cashier checks, wire transfers, ACH transfers, direct
2 deposits or otherwise to various entities.

3 17. Upon information and belief, during the course of their relationship, the Defendant and
4 Debtors entered into agreements for the purchase of goods and/or services by Debtors from the
5 Defendant, which are evidenced by one or more contracts, purchase orders, invoices, communications
6 and other documents (collectively, the “Agreements”). Upon further information and belief, the
7 Agreements concerned and related to the goods and/or services provided by Defendant to the Debtors.
8 St. Vincent Medical Center’s payments to the Defendant pursuant to the Agreements during the
9 Preference Period are set forth on the Statement of Account, which is attached hereto and incorporated
10 by reference as Exhibit A. Seton Medical Center’s payments to the Defendant pursuant to the
11 Agreements during the Preference Period are set forth on the Statement of Account, which is attached
12 hereto and incorporated by reference as Exhibit B. O’Connor Hospital’s payments to the Defendant
13 pursuant to the Agreements during the Preference Period are set forth on the Statement of Account,
14 which is attached hereto and incorporated by reference as Exhibit C.

15 18. Plaintiffs are seeking to avoid all of the transfers of an interest of Debtors’ property made
16 by Debtors to Defendant within the Preference Period.

17 19. St. Vincent Medical Center made transfer(s) of an interest of St. Vincent Medical
18 Center’s property to or for the benefit of Defendant during the Preference Period through payments
19 aggregating not less than the amount set forth on Exhibit A hereto (the “St. Vincent Medical Center
20 Transfer(s)”). The details of each St. Vincent Medical Center Transfer are set forth on Exhibit A attached
21 hereto and incorporated by reference.

22 20. Seton Medical Center made transfer(s) of an interest of Seton Medical Center’s property
23 to or for the benefit of Defendant during the Preference Period through payments aggregating not less
24 than the amount set forth on Exhibit B hereto (the “Seton Medical Center Transfer(s)”). The details of
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1 each Seton Medical Center Transfer are set forth on Exhibit B attached hereto and incorporated by
2 reference.

3 21. O'Connor Hospital made transfer(s) of an interest of O'Connor Hospital's property to or
4 for the benefit of Defendant during the Preference Period through payments aggregating not less than
5 the amount set forth on Exhibit C hereto (the "O'Connor Hospital Transfer(s)").⁴ The details of each
6 O'Connor Hospital Transfer are set forth on Exhibit C attached hereto and incorporated by reference.
7

8 22. Plaintiffs, through counsel, sent a demand (the "Demand") to Defendant, seeking a return
9 of the Transfer(s). The Demand indicated the potential statutory defenses available to Defendant
10 pursuant to § 547(c), and requested that if Defendant had evidence to support any affirmative defenses,
11 it provide this evidence so Plaintiffs could review the same. Plaintiffs also performed their own due
12 diligence evaluation of the reasonably knowable affirmative defenses available to Defendant.
13

14 23. Based upon Plaintiffs' review of the information, if any, provided by Defendant prior to
15 filing this Complaint, and after performing their own due diligence evaluation of the reasonably
16 knowable affirmative defenses to avoidance of the Transfer(s), Plaintiffs have determined that they may
17 avoid some or all of the Transfers even after taking into account Defendant's alleged affirmative
18 defenses.
19

20 24. During the course of this proceeding, Plaintiffs may learn (through discovery or
21 otherwise) of additional transfers made to Defendant during the Preference Period. It is Plaintiffs'
22 intention to avoid and recover all preferential transfers of property made by the Debtors to or for the
23 benefit of Defendant or any other transferee. Plaintiffs reserve their right to amend this original
24 Complaint to include: (i) further information regarding the Transfer(s), (ii) additional transfers, (iii)
25 modifications of and/or revision to Defendant's name, (iv) additional defendants, and/or (v) additional
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28 ⁴ Collectively, the St. Vincent Medical Center Transfers, the Seton Medical Center Transfers, and the O'Connor
Hospital Transfers will be referred to as the "Transfers."

1 causes of action, if applicable (collectively, the “Amendments”), that may become known to Plaintiffs
2 at any time during this adversary proceeding, through formal discovery or otherwise, and for the
3 Amendments to relate back to this original Complaint.
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5 **FIRST CLAIM FOR RELIEF**

6 **(Avoidance of Preference Period Transfers from St. Vincent Medical Center – 11 U.S.C.**

7 **§ 547)**

8 25. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

9 26. During the Preference Period, St. Vincent Medical Center made the St. Vincent Medical
10 Center Transfers to or for the benefit of Defendant in an aggregate amount not less than the amount set
11 forth on Exhibit A hereto.

12 27. Each St. Vincent Medical Center Transfer was made from the Disbursement Accounts
13 described *supra*, and constituted transfers of an interest in property of St. Vincent Medical Center.

14 28. Defendant was a creditor of St. Vincent Medical Center at the time of each St. Vincent
15 Medical Center Transfer by virtue of supplying goods and/or services identified in this Complaint and
16 in the Agreements to St. Vincent Medical Center, as more fully set forth on Exhibit A hereto, for which
17 St. Vincent Medical Center was obligated to pay following delivery in accordance with the Agreements.
18 *See Exhibit A.*

19 29. Each St. Vincent Medical Center Transfer was to or for the benefit of a creditor within
20 the meaning of § 547(b)(1) because each St. Vincent Medical Center Transfer either reduced or fully
21 satisfied a debt or debts then owed by St. Vincent Medical Center to Defendant. *See Exhibit A.*

22 30. Each St. Vincent Medical Center Transfer was made for, or on account of, an antecedent
23 debt or debts owed by St. Vincent Medical Center to Defendant before such St. Vincent Medical Center
24 Transfers were made, as asserted by Defendant and memorialized in the Agreements, each of which
25 constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior
26 to being paid by St. Vincent Medical Center. *See Exhibit A.*

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31. Each St. Vincent Medical Center Transfer was made while St. Vincent Medical Center was insolvent. St. Vincent Medical Center is entitled to the presumption of insolvency for each St. Vincent Medical Center Transfer made during the Preference Period pursuant to § 547(f).

SECOND CLAIM FOR RELIEF

35. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

39. Each Seton Medical Center Transfer was to or for the benefit of a creditor within the meaning of § 547(b)(1) because each Seton Medical Center Transfer either reduced or fully satisfied a debt or debts then owed by Seton Medical Center to Defendant. *See* Exhibit B.

40. Each Seton Medical Center Transfer was made for, or on account of, an antecedent debt or debts owed by Seton Medical Center to Defendant before such Seton Medical Center Transfers were made, as asserted by Defendant and memorialized in the Agreements, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by Seton Medical Center. *See* Exhibit B.

41. Each Seton Medical Center Transfer was made while Seton Medical Center was insolvent. Seton Medical Center is entitled to the presumption of insolvency for each Seton Medical Center Transfer made during the Preference Period pursuant to § 547(f).

42. Each Seton Medical Center Transfer was made during the Preference Period, as set forth on Exhibit B.

43. As a result of each Seton Medical Center Transfer, Defendant received more than Defendant would have received if: (i) Seton Medical Center’s case was under chapter 7 of the Bankruptcy Code; (ii) the Seton Medical Center Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by Seton Medical Center’s schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received to date, Seton Medical Center’s liabilities exceed its assets to the point that unsecured creditors will not receive a full payout of their claims from Seton Medical Center’s bankruptcy estate.

44. In accordance with the foregoing, each Seton Medical Center Transfer is avoidable pursuant to § 547(b).

THIRD CLAIM FOR RELIEF

(Avoidance of Preference Period Transfers from O’Connor Hospital – 11 U.S.C. § 547)

45. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

1 46. During the Preference Period, O'Connor Hospital made the O'Connor Hospital Transfers
2 to or for the benefit of Defendant in an aggregate amount not less than the amount set forth on Exhibit
3 C hereto.

4 47. Each O'Connor Hospital Transfer was made from the Disbursement Accounts described
5 *supra*, and constituted transfers of an interest in property of O'Connor Hospital.

6 48. Defendant was a creditor of O'Connor Hospital at the time of each O'Connor Hospital
7 Transfer by virtue of supplying goods and/or services identified in this Complaint and in the Agreements
8 to O'Connor Hospital, as more fully set forth on Exhibit C hereto, for which O'Connor Hospital was
9 obligated to pay following delivery in accordance with the Agreements. *See* Exhibit C.

10 49. Each O'Connor Hospital Transfer was to or for the benefit of a creditor within the
11 meaning of § 547(b)(1) because each O'Connor Hospital Transfer either reduced or fully satisfied a debt
12 or debts then owed by O'Connor Hospital to Defendant. *See* Exhibit C.

13 50. Each O'Connor Hospital Transfer was made for, or on account of, an antecedent debt or
14 debts owed by O'Connor Hospital to Defendant before such O'Connor Hospital Transfers were made,
15 as asserted by Defendant and memorialized in the Agreements, each of which constituted a "debt" or
16 "claim" (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by
17 O'Connor Hospital. *See* Exhibit C.

18 51. Each O'Connor Hospital Transfer was made while O'Connor Hospital was insolvent.
19 O'Connor Hospital is entitled to the presumption of insolvency for each O'Connor Hospital Transfer
20 made during the Preference Period pursuant to § 547(f).

21 52. Each O'Connor Hospital Transfer was made during the Preference Period, as set forth
22 on Exhibit C.

23 53. As a result of each O'Connor Hospital Transfer, Defendant received more than
24 Defendant would have received if: (i) O'Connor Hospital's case was under chapter 7 of the Bankruptcy
25 Code; (ii) the O'Connor Hospital Transfers had not been made; and (iii) Defendant received payments
26 of its debts under the provisions of the Bankruptcy Code. As evidenced by O'Connor Hospital's
27 schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received
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1 to date, O'Connor Hospital's liabilities exceed its assets to the point that unsecured creditors will not
2 receive a full payout of their claims from O'Connor Hospital's bankruptcy estate.

3 54. In accordance with the foregoing, each O'Connor Hospital Transfer is avoidable
4 pursuant to § 547(b).

5 **FOURTH CLAIM FOR RELIEF**

6 **(Avoidance of Unauthorized Post-Petition Transfers – 11 U.S.C. § 549)**

7 55. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

8 56. To the extent any of the Transfer(s) identified on Exhibits A through C cleared the
9 Disbursement Account(s) after the Petition Date and were not authorized by the Court or the Bankruptcy
10 Code (the "Post-Petition Transfers"), Plaintiffs plead that such Post-Petition Transfers are avoidable
11 pursuant § 549.

12 **FIFTH CLAIM FOR RELIEF**

13 **(Recovery of Preferential Transfers – 11 U.S.C. § 550)**

14 57. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

15 58. Plaintiffs are entitled to avoid the Transfer(s) pursuant to § 547(b) and/or any Post-
16 Petition Transfers pursuant to § 549 (collectively, the "Avoidable Transfers").

17 59. Defendant was the initial transferee of the Avoidable Transfers or the immediate or
18 mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfers
19 were made.

20 60. Pursuant to § 550(a), Plaintiffs are entitled to recover the Avoidable Transfers from
21 Defendant, plus interest thereon to the date of payment and the costs of this action.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))**

24 61. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.
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63. Defendant has not paid the amount of the Avoidable Transfers, or turned over such property, for which Defendant is liable under § 550.

65. Pursuant to § 502(j), any and all Claims of Defendant, and/or its assignee, against the Debtors' estate previously allowed by the Debtors, must be reconsidered and disallowed until such time as Defendant pays to the Debtors an amount equal to the aggregate amount of the Avoidable Transfers.

WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as follows:

2. On Plaintiffs' Sixth Claim for Relief, judgment in favor of Plaintiffs and against Defendant disallowing any claims held or filed by Defendant against Plaintiffs until Defendant returns the Avoidable Transfers to Plaintiffs pursuant to § 502(d) and (j); and

3. For such other and further relief as the Court deems just and proper.

1 DATED: August 28, 2020

2 DENTONS US LLP
3 Samuel R. Maizel
4 Tania M. Moyron
5 Nicholas A. Koffroth

6 and

7 ASK LLP
8 Joseph L. Steinfeld, Jr.
9 Brigitte McGrath

10 By: /s/ Tania M. Moyron
11 TANIA M. MOYRON

12 Attorneys for the Chapter 11 Debtors and
13 Debtors In Possession
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DENTONS US LLP
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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300